

NOTICE OF APPEAL
TO
U.S. COURT OF APPEALS, THIRD CIRCUIT

U.S. District Court for the District of Delaware

CIRCUIT COURT
DOCKET NUMBER: _____
(leave blank)

FULL CAPTION IN DISTRICT COURT AS FOLLOWS:

MARK A. SPRUANCE

THOMAS L. CARROLL, WARDEN,
CARL C. DANBERG - ATTORNEY GENERAL,
OF THE STATE OF DELAWARE.

DISTRICT COURT
JUDGE: JOSEPH J. FARWAN

Notice is hereby given that MARK A. SPRUANCE
(Named Party)

appeals to the United States Court of Appeals for the Third Circuit from [] Judgment. [Order]

[Other (specify) MEMORANDUM]

entered in this action on 10-17-2006
(date)

Dated: 10-17-2006

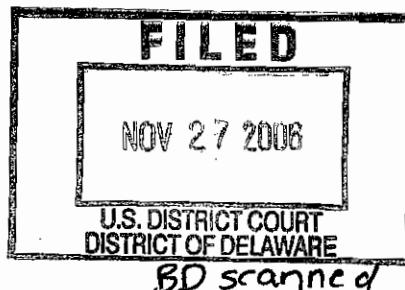
PRO'SE
(Counsel for Appellant-Signature)

MARK A. SPRUANCE - PRO'SE
(Name of Counsel - Typed)

1181 PADDACK ROAD
(Address)

SMYRNA, DELAWARE. 19972
(City, State Zip)

N/A
(Telephone Number)



CARL C. DANBERG
(Counsel for Appellee)
CARREL STATE OFFICE BUILDING
820 N. FRENCH STREET
(Address)

WILMINGTON, DELAWARE. 19801
(City, State Zip)

N/A
(Telephone Number)

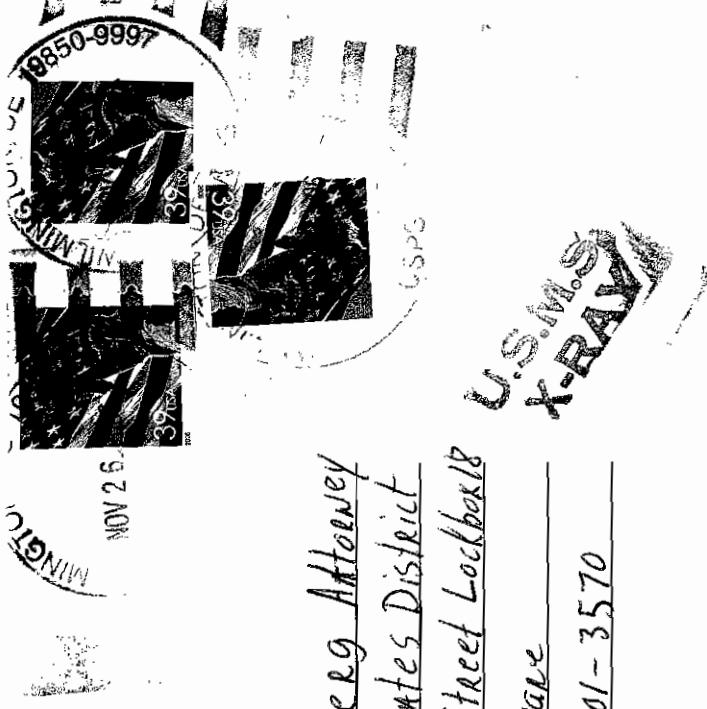
NOTE: USE ADDITIONAL SHEETS if all appellants and/or all counsel for appellees cannot be listed on the Notice of Appeal sheet.

Imm Me Meek Spruance
SBI# 70011 UNIT W-1 L-3
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977

• Carl C. Danberg Attorney
General, United States District
Court 874 N. King Street Lockbox 18
Wilmington, Delaware

Legal Mail

19801-3570



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARK A. SPRUANCE, :
: Petitioner, :
: :
v. : Civ. Action No. 06-337-JJF
: :
THOMAS L. CARROLL, Warden, :
and CARL C. DANBERG, :
Attorney General of the :
State of Delaware, :
: Respondents. :
:

MEMORANDUM ORDER

Pending before this Court is Respondents' Motion To Dismiss Petitioner's petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 for lack of subject matter jurisdiction. (D.I. 13). For the reasons discussed, the Court will grant the motion.

I. BACKGROUND

In 1995, Petitioner Mark A. Spruance filed his first petition for a writ of habeas corpus in this Court pursuant to 28 U.S.C. § 2254 challenging his 1992 conviction for Attempted First Degree Robbery and Unlawful Sexual Intercourse. The petition asserted that the trial court admitted improper testimony because the interpreter mistranslated the victim's testimony and that the prosecutor made improper comments in his closing arguments at trial. On January 22, 1996, the Court denied the petition.

On May 22, 2006, Petitioner filed the present habeas petition asserting the following three claims: 1) that he was

denied a separate interpreter in violation of the Confrontation Clause; 2) that the prosecution amended the indictment from Unlawful Sexual Intercourse to Attempted Unlawful Intercourse without returning to the grand jury in violation of the Fifth and Sixth Amendments; and 3) that the state court violated the Fifth Amendment by not following its rules regarding amendment of an indictment. (D.I. 2).

On September 20, 2006, Respondents filed this Motion To Dismiss for lack of subject matter jurisdiction. (D.I. 13). Specifically, Respondents contend the Court has no jurisdiction because the instant habeas petition is a "second or successive" petition and Petitioner has not obtained leave from the appropriate court of appeals before filing.

II. DISCUSSION

Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a defendant filing a second or successive habeas petition in the district court must first obtain authorization from the appropriate court of appeals. 28 U.S.C. § 2244 (b) (3) (A). A habeas petition is "second or successive" if it asserts claims that could have been raised in the first petition and there is no legitimate excuse for failing to raise the claims in the first petition. Benchoff v. Colleran, 404 F.3d 812, 817-18 (3d. Cir. 2005). This AEDPA requirement applies even if the first petition was filed before AEDPA's enactment. Id.

Both Petitioner's original and instant habeas petitions challenge conduct by the court and prosecution surrounding the circumstances of Petitioner's conviction. The instant petition does not challenge conduct that occurred subsequent to the filing of Petitioner's original habeas petition. The Court concludes the claims asserted in the instant petition could have been raised in the original and, therefore, the instant petition is a second or successive petition. The record is clear that Petitioner has not obtained leave from the Court of Appeals for the Third Circuit to file the instant petition. Thus, the Court finds that pursuant to 28 U.S.C. § 2244(b)(3), it does not have jurisdiction to review Petitioner's habeas petition. Accordingly, the Court will grant Respondents' Motion To Dismiss (D.I. 13).

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that:

1. Respondents' Motion To Dismiss (D.I. 13) is GRANTED.
2. Petitioner's Motion For Leave To File Motion To Compel (D.I. 14) is DENIED as moot.
3. A certificate of appealability is not warranted because Petitioner has failed to make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see United States v. Ever, 113 F.3d 470 (3d Cir. 1997).

4. Pursuant to Rule 4, 28 U.S.C. § 2254, the Clerk shall forthwith serve a copy of this Order upon: 1) the above-named Warden of the facility in which Petitioner is housed; and 2) the Attorney General for the State of Delaware.
5. The Clerk shall send a copy of this Order to Petitioner.

October 17, 2006



UNITED STATES DISTRICT JUDGE

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District	DELAWARE
Name (under which you were convicted):	Docket or Case No.:	
<u>MARK A. SPRUANCE</u>		
Place of Confinement:	Prisoner No.:	
<u>Delaware Correctional Center</u>	<u>00170011</u>	
Petitioner (include the name under which you were convicted)	Respondent (authorized person having custody of petitioner)	
<u>MARK A. SPRUANCE v. THOMAS CARROLL</u>		
The Attorney General of the State of		
<u>CARL DRNBERG</u>		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: THE
SUPERIOR COURT OF SUSSEX COUNTY

(b) Criminal docket or case number (if you know): 92-01-0382 - 0383 (R3)

2. (a) Date of the judgment of conviction (if you know): 12-17-1992

(b) Date of sentencing: same

3. Length of sentence: 28 years level-5 followed by probation

4. In this case, were you convicted on more than one count or of more than one crime? Yes No

5. Identify all crimes of which you were convicted and sentenced in this case: Attempted
Robbery and Unlawful sexual intercourse

6. (a) What was your plea? (Check one)

(1) Not guilty (3) Nolo contendere (no contest)

(2) Guilty (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court: Delaware supreme Court

(b) Docket or case number (if you know): 640 A. 2d 655 (1994) WL 144590

(c) Result: Conviction affirmed

(d) Date of result (if you know): 3/25/1994

(e) Citation to the case (if you know): 640 A. 2d. 655 1994 WL 144590

(f) Grounds raised: Don't remember exactly

(g) Did you seek further review by a higher state court? Yes No

If yes, answer the following:

(1) Name of court: Superior Court of Sussex County

(2) Docket or case number (if you know): 92-01-0382 - 0383

(3) Result: denied

(4) Date of result (if you know): 10/28/1996

(5) Citation to the case (if you know): N/A

(6) Grounds raised: Don't remember exactly

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A(3) Date of result (if you know): N/A(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Superior Court of Sussex County
(2) Docket or case number (if you know): Cr. A. No. 92-01-0382-0383
(3) Date of filing (if you know): 8/11/1992
(4) Nature of the proceeding: Motion for postconviction relief
(5) Grounds raised: Violation of constitutional rights that pertain to 5th and 6th amendment rights and Superior court criminal rules 7(a) and 7(b)

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No

(7) Result: motion denied(8) Date of result (if you know): 1/23/1998

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: Delaware Supreme Court(2) Docket or case number (if you know): 218-A.2d 529 1998 WL 666214(3) Date of filing (if you know): don't know(4) Nature of the proceeding: Appealed to the Supreme Court(5) Grounds raised: same as above

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No

(7) Result: Supreme court affirmed

(8) Date of result (if you know): 7/15/1998

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: Superior court of Sussex County

(2) Docket or case number (if you know): 92-01-0382-0383

(3) Date of filing (if you know): don't remember

(4) Nature of the proceeding: Motion for Postconviction Relief

(5) Grounds raised: Violation of fifth amendment rights and
sixth amendment rights - illegal arrest - insufficient
evidence - illegal conviction

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No

(7) Result: Motion denied

(8) Date of result (if you know): March-11-05

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes No

(2) Second petition: Yes No

(3) Third petition: Yes No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: VIOLATION OF THE SIXTH AMENDMENT
CONFRONTATION CLAUSE

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The (witness - victim) gave testimonial communication to the court as a witness for the prosecution in a language unknown to the defense. That language was interpreted by a translator provided for the prosecution. The defendant and his counsel was denied a interpreter for the defense even after conflicts were found with the victim's testimony, and the interpretation.

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Postconviction Relief
Name and location of the court where the motion or petition was filed: Sussex County Superior Court

Docket or case number (if you know): CR. A. NO. 92-01-0382-0383 (R3)Date of the court's decision: 10-25-2005Result (attach a copy of the court's opinion or order, if available): EXHIBIT (1)

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SUPREME COURT OF
DELAWARE - DOVER, DELDocket or case number (if you know): NO. 564, 2005Date of the court's decision: 4-24-2006Result (attach a copy of the court's opinion or order, if available): EXHIBIT (2)(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/APresent petitionGROUND TWO: VIOLATION OF THE SIXTH AMENDMENT
AND FIFTH AMENDMENT GOVERNING GRAND JURY INDICTMENTS.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

After the defense counsel proved that the state's evidence would not render a conviction, the prosecution changed the indicted charged of unlawful sexual intercourse to the charge of attempted without returning to the Grand jury;

for the Grand jury to review and make a determination, to prevent the Government's intrusion.

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: counsel elected to raise other grounds against my wishes

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Post-conviction

Name and location of the court where the motion or petition was filed: SUSSEX COUNTY SUPERIOR COURT, 1 the circle suite 2 - Georgetown Del 19947

Docket or case number (if you know): NO. 92-01-0382-0383

Date of the court's decision: October 16, 2005

Result (attach a copy of the court's opinion or order, if available): see EXHIBIT (1)

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: THE DELAWARE SUPREME COURT DOVER, Del.

Docket or case number (if you know): NO. 564, 2005

Date of the court's decision: April 1/24/2006

Result (attach a copy of the court's opinion or order, if available): see EXHIBIT (2)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: N/A

Present Petition

GROUND THREE: VIOLATION OF THE FIFTH AMENDMENT Rule ESTABLISHED IN THE SUPERIOR COURT RULES 7(a) and 7(b).

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

This administration of the law was unreasonable and placed the defendant twice in jeopardy, and creating harmful errors and a form of prejudice because the rules require that the indictment be plain-concise, and definite written of facts constituting the offense or offenses charged and, not changed or altered without returning to the grand jury for a new indictment.

(b) If you did not exhaust your state remedies on Ground Three, explain why: N/A

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Counsel elected to raise different grounds against my wishes.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Post-conviction Relief

Name and location of the court where the motion or petition was filed: SUSSEX COUNTY
SUPERIOR COURT / The Circle Suite 2 Georgetown Del 19947

Docket or case number (if you know): CR.A. NO. 92-01-0383-0382

Date of the court's decision: 1-23-1998

Result (attach a copy of the court's opinion or order, if available): N/A

lost over the years

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: THE SUPREME COURT OF
DELAWARE

Docket or case number (if you know): 718 A.2d 529 1998 WL 666714

Date of the court's decision: 7-15-1998

Result (attach a copy of the court's opinion or order, if available): N/A

lost over the years

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: I have
re-raised this issue of Constitutional violation in the
superior Court and Supreme Court.

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) If you did not exhaust your state remedies on Ground Four, explain why:

N/A

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No (2) If you did not raise this issue in your direct appeal, explain why:N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

N/AName and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NIA

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: **N/A**

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: *N/A*

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Dont remember

(b) At arraignment and plea: KARL HALLER

(c) At trial: KARL HALLER

(d) At sentencing: KARL HALLER

(e) On appeal: DIRECT APPEAL - KARL HALLER AND John R HINGER JR.

(f) In any post-conviction proceeding: PRO-SE

(g) On appeal from any ruling against you in a post-conviction proceeding: PRO-SE

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* *The petitioner states that he has filed all his motions and appeals in accordance with the superior court and Supreme Court Rules as required. He states that pursuant to Superior Court Rule b1(i)(5) he presented evidence and facts supporting a colorable claim that there was a miscarriage of justice. He also presented factual constitutional violations that undermined the fundamental legality, reliability, integrity and fairness of the proceedings that led to his conviction. He states that the lower Courts consistently ignore relevant issues of constitutional violations that call for new trials or dismissal of charges. The Petitioner is seeking this Courts permission to allow him to bring his case to the District Court for full review, and that the trial Court be subjected to procedures as the criminal rules require regardless of how many years has past. It has become common practice for Sasser County Superior Court to ignore the Grand jury procedures required in indictments. Please review Exhibit (1) and Exhibit (B) The trial court has never examined the factual violation but rather ignored them by barring them without consideration.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: THAT HIS CASE BE REMANDED BACK TO THE TRIAL COURT FOR A NEW TRIAL

or any other relief to which petitioner may be entitled.

PRO-SE

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on

May 15 - 2006 (month, date, year).

Executed (signed) on 15 (date).

Mr Ward Lawrence

Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION

District Court

[Insert appropriate court]

* * * * *